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September 22, 2023

Judge Jacqueline Corley
 San Francisco Courthouse, Courtroom 8 – 18th Floor
 450 Golden Gate Avenue, San Francisco, CA 94102

Dear Judge Corley,

Defendants submit this Informal Joint Letter Brief regarding Defendants’ request to compel the deposition of Plaintiff Michael Lockhart pursuant to your direction during the August 24, 2023 Case Management Conference for the matter of *Daniel Gonzalez, et al. v. Alameda County Sheriff’s Office* (Case No. 3:19-cv-07423 JSC).

I. Brief Background

A. Plaintiff Michael Lockhart’s Claims

This lawsuit arises out of Plaintiffs’ allegations regarding the food, medical, and sanitation conditions at Santa Rita Jail. Plaintiff Michael Lockhart is one of multiple named plaintiffs in this partially certified class action. Mr. Lockhart’s claims arise from allegedly deficient medical treatment he received for severe tooth pain during his time in custody at Santa Rita Jail. Dkt. No. 216 at pg. 8-9. Although Mr. Lockhart’s deposition was scheduled to occur on August 25, 2023, he declined to appear and has since indicated that he is unwilling to be deposed.

B. Summary of Meet and Confer Efforts

The parties met and conferred and selected a mutually agreeable date, August 25, 2023, for Plaintiff Lockhart’s deposition as noted in the parties’ August 17, 2023 Joint Case Management Statement. On August 21, 2023, Plaintiffs’ Counsel emailed Defense Counsel the following: “Michael Lockhart has indicated that he will not be appearing for his deposition on Friday. He will not be rescheduling his deposition.” Subsequently, Plaintiffs’ Counsel sent Defense Counsel follow-up emails stating that she is not authorized to enter into a stipulation of dismissal for Plaintiff Lockhart and cannot confirm that Plaintiff Lockhart will not oppose a motion to dismiss for failure to prosecute. Despite repeated attempts to reschedule his deposition, as indicated in Exhibit A, Plaintiffs’ Counsel has consistently stated that Mr. Lockhart is declining to appear for deposition.

II. Discussion

A. Defendants’ Position

Federal Rule of Civil Procedure 30 governs the noticing of depositions. On July 13, 2023, pursuant to Federal of Civil Procedure 30, Defendant Wellpath Managements Inc., properly served Plaintiff Lockhart with a deposition notice. Despite the fact that the deposition was set for the mutually agreeable date of August 25, 2023, Plaintiff Lockhart refused to appear. To date he has not provided any explanation, nor any justification, for his continued refusal to be deposed in this case.

Defendants may, as a matter of right, depose any party without leave of court. Fed. R. Civ. Proc. 30(a). Pursuant to Federal Rule of Civil Procedure 37(a)(1), “...a party may move for an order



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compelling disclosure or discovery. The motion must include a certification the movant has in good faith conferred.... with the person...failing to make disclosure or discovery...” Furthermore, pursuant to Federal Rule of Civil Procedure 37(d)(1)(A)(i), a court may order sanctions if “a party....fails, after being served with proper notice, to appear for...deposition.” Ninth Circuit case law holds that a plaintiff’s failure to appear for a properly noticed deposition, even absent a court order, may result in sanctions as severe as the dismissal of their suit. *See Henry v. Gill Industries, Inc.*, 983 F.2d 943 (9th Cir. 1993) (It was proper for the court to dismiss a case due to repeated noncompliance with discovery rules, in part due to on plaintiff’s repeated failure to appear for deposition); *see also U.S. v. Uptergrove*, No. 06-cv-AWI-GSA, 2008 WL 652119, at *7 (E.D. Cal. Mar. 10, 2008) (Plaintiff was entitled to sanctions in part due to defendant’s repeated failure to appear at properly noticed depositions).

Here, as noted above, Defendants met and conferred with Plaintiffs’ Counsel before scheduling Plaintiff Lockhart’s deposition for a mutually agreeable date. Defense Counsel have repeatedly met and conferred with Plaintiffs’ Counsel to reschedule Plaintiff Lockhart’s deposition since his refusal to appear at his scheduled deposition. To date, Plaintiff Lockhart has continued to refuse to be deposed in this case. Plaintiffs’ Counsel have been unable to provide Defense Counsel with an explanation for his continued refusal. They have also been unwilling to provide an alternate date for Plaintiff Lockhart’s deposition and to confirm that Plaintiff Lockhart will not oppose a motion to dismiss for failure to prosecute.

Defendants are entitled to depose Plaintiff Lockhart so that they can understand the individualized claims and damages he is asserting in this case. Since fact discovery closes on October 16, 2023, Defendants respectfully ask the Court to compel Plaintiff Lockhart to appear for a deposition on a specific date on or before October 16, 2023. If Plaintiff Lockhart chooses not to appear for his deposition on the selected date, Defendants respectfully request that the Court dismiss his claims from this action with prejudice pursuant to Federal Rule of Civil Procedure 37(d)(1)(A)(i).

B. Plaintiffs’ Position

As indicated by Exhibit B, Defendants asked Plaintiffs’ Counsel to join in this joint statement on three separate occasions, but never received a response.

Respectfully,

/s/ ***Temitayo O. Peters*** (counsel for the Alameda County Defendants)

/s/ ***Charles R. Reitmeyer*** (counsel for Aramark Correctional Services, LLC)

/s/ ***Peter G. Bertling*** (counsel for Wellpath Management, Inc.)

DECLARATION REGARDING AUTHORIZATION

Under N.D. Cal. Local Rule 5-1(i)(3), I attest that I obtained authorization in the filing of this document from the other signatories listed here. By: /s/ *Temitayo O. Peters*

EXHIBIT A

Lee, Tawnya

From: Peters, Temitayo O.
Sent: Wednesday, September 20, 2023 12:28 PM
To: yhuang.law@gmail.com; tomnanney@gmail.com
Cc: Reitmeyer, Charles J.; Peter Bertling; Thomas, Gregory B.; Wheeling, Emily Kimmelman; Bonine, Elise L.; Lee, Tawnya
Subject: RE: [draft] Joint Discovery Letter Re Plaintiff Michael Lockhart Failure to Appear
Attachments: [draft] Joint Discovery Letter Re Plaintiff Michael Lockhart Failure to Appear.docx

Ms. Huang and Mr. Nanney,

If we do not receive your additions by close of business tomorrow, we will be submitting this letter to the Court as is and noting that we requested your input on three separate occasions, but did not receive a response.

Ope

From: Peters, Temitayo O.
Sent: Monday, September 18, 2023 7:16 PM
To: yhuang.law@gmail.com; tomnanney@gmail.com
Cc: Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com>; Peter Bertling <peter@bertlinglawgroup.com>; Thomas, Gregory B. <GThomas@bwsllaw.com>; Wheeling, Emily Kimmelman <emily.wheeling@morganlewis.com>; Bonine, Elise L. <EBonine@bwsllaw.com>; Lee, Tawnya <TLee@bwsllaw.com>
Subject: RE: [draft] Joint Discovery Letter Re Plaintiff Michael Lockhart Failure to Appear

Ms. Huang and Mr. Nanney,

Please let us know when we can expect to receive your additions to the attached joint discovery letter. If you do not intend to contribute to the letter, please let us know.

Thanks,

Ope

From: Bonine, Elise L. <EBonine@bwsllaw.com>
Sent: Thursday, September 14, 2023 11:04 AM
To: yhuang.law@gmail.com; tomnanney@gmail.com
Cc: Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com>; Peters, Temitayo O. <TPeters@bwsllaw.com>; Peter Bertling <peter@bertlinglawgroup.com>; Thomas, Gregory B. <GThomas@bwsllaw.com>; Wheeling, Emily Kimmelman <emily.wheeling@morganlewis.com>
Subject: [draft] Joint Discovery Letter Re Plaintiff Michael Lockhart Failure to Appear

Good morning Counselors,

Please see the attached [draft] Joint Discovery Letter Brief re Michael Lockhart's failure to appear for deposition.

Please add your section and let us know if there are any suggestions regarding the contents of the rest of the letter. We will then work together to finalize before sending to the court.

Best,

Elise L. Bonine | Associate

Pronouns: she, her, hers

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EXHIBIT B

Lee, Tawnya

From: Yolanda Huang <yhuang.law@gmail.com>
Sent: Wednesday, August 23, 2023 9:51 AM
To: Reitmeyer, Charles J.
Cc: Wheeling, Emily Kimmelman; Peters, Temitayo O.; Peter Bertling; Thomas, Gregory B.; Lee, Tawnya; Tom Nanney
Subject: Re: Michael Lockhart

[EXTERNAL]

I am not at liberty to disclose any attorney client communications.

On Wed, Aug 23, 2023 at 9:44 AM Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com> wrote:

Yolanda,

Have you already informed Mr. Lockhart of the consequences of failing to appear for his deposition on Friday and his refusal to reschedule his deposition?

Thanks.

Buck

Charles J. Reitmeyer

Morgan, Lewis & Bockius LLP

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Assistant: Angela P. Garden | +1.215.963.5463 | angela.garden@morganlewis.com



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From: Yolanda Huang <yhuang.law@gmail.com>
Sent: Wednesday, August 23, 2023 12:39 PM
To: Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com>
Subject: Re: Michael Lockhart

[EXTERNAL EMAIL]

I cannot. If you file, I will inform Mr. Lockhart and provide him with copies of your moving papers.

On Wed, Aug 23, 2023 at 9:38 AM Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com> wrote:

Yolanda,

Please confirm that Mr. Lockhart will not be opposing Defendants' forthcoming motion to dismiss Mr. Lockhart for failure to prosecute.

Thanks.

Buck

Charles J. Reitmeyer

Morgan, Lewis & Bockius LLP

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Assistant: Angela P. Garden | +1.215.963.5463 | angela.garden@morganlewis.com



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From: Yolanda Huang <yhuang.law@gmail.com>

Sent: Wednesday, August 23, 2023 12:33 PM

To: Peters, Temitayo O. <TPeters@bwsllaw.com>

Cc: Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com>; Peter Bertling <peter@bertlinglawgroup.com>;
Wheeling, Emily Kimmelman <emily.wheeling@morganlewis.com>; Thomas, Gregory B. <GThomas@bwsllaw.com>;
Lee, Tawnya <TLee@bwsllaw.com>; Tom Nanney <tomnanney@gmail.com>

Subject: Re: Michael Lockhart

[EXTERNAL EMAIL]

I cannot. I would have to communicate with each named plaintiff, and as you know this will have to be via USPS, with an anticipated turn around time of 4 weeks. Please confirm that you are so requesting.

On Wed, Aug 23, 2023 at 9:15 AM Peters, Temitayo O. <TPeters@bwsllaw.com> wrote:

Ms. Huang,

If you do not have authority to enter into a stipulation, can you confirm that the remaining Plaintiffs will not oppose Defendants' forthcoming motion to dismiss Mr. Lockhart for failure to prosecute?

Thanks,

Temitayo O. Peters | Partner

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From: Yolanda Huang <yhuang.law@gmail.com>

Sent: Monday, August 21, 2023 4:44 PM

To: Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com>

Cc: Peters, Temitayo O. <TPeters@bwsllaw.com>; Peter Bertling <peter@bertlinglawgroup.com>; Wheeling, Emily Kimmelman <emily.wheeling@morganlewis.com>

Subject: Re: Michael Lockhart

[EXTERNAL]

I am not authorized to enter into a stipulation.

On Mon, Aug 21, 2023 at 3:28 PM Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com> wrote:

Yolanda,

We assume that the parties will therefore file a stipulation of dismissal regarding Mr. Lockhart.

Thanks and I hope all is well.

Buck

Charles J. Reitmeyer

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From: Yolanda Huang <yhuang.law@gmail.com>

Sent: Monday, August 21, 2023 6:13 PM

To: Reitmeyer, Charles J. <charles.reitmeyer@morganlewis.com>; Peters, Temitayo O. <TPeters@bwslaw.com>;

Peter Bertling <peter@bertlinglawgroup.com>

Subject: Michael Lockhart

[EXTERNAL EMAIL]

Dear Counsels,

Michael Lockhart has indicated that he will not be appearing for his deposition on Friday. He will not be rescheduling his deposition. Thank-you.

--

Yolanda Huang, Esq.

PO Box 5475 • Berkeley • CA • 94705 • Phone:510-329-2140 • Fax:510-580-9410

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